**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

**Criminal Revision 534 of 2007**

Date of decision: 20.3.2007

Janak Raj …Petitioner

Versus

State of Punajb …Respondent

Present: Mr Gurcharan Dass, Advocate, for the petitioner.

**S.S. SARON, J.**

This criminal revision petition has been filed against the order dated 15.2.2007 passed by the learned Additional Sessions Judge, Jalandhar whereby the appeal of the petitioner against the judgment and order of conviction and sentence dated 13.9.2005 passed by the learned Sub Divisional Judicial Magistrate, Phillaur has been dismissed.

According to Hardial Singh (PW9), the bus being driven by the petitioner in a rash and negligent manner struck against a jeep on its front side. The front window of the Jeep got entangled with the bus. The Jeep was dragged by the bus upto 12 Karams. Then it was left towards the side of the garden. The name of the driver of the bus was later on revealed to be Janak Raj (petitioner). The occupants of the Jeep namely Bishan Singh suffered a deep wound on his head towards right side of the eye-brow. Paramjit Singh fell on the ground from the Jeep. Baljit Kaur and her daughter – Pawanjit Kaur also fell on the ground. Baljit Kaur received injury on her right cheek and some injuries on her head, which were not visible. Both the legs of Pawanjit Kaur were fractured. Paramjit Singh also

received injuries. The petitioner, who was the driver of the bus, fled away from the spot. The learned trial Magistrate, after considering the evidence and material on record, convicted and sentenced the petitioner to RI for one year for the offence under Section 304-A IPC and to pay fine of Rs 1,000/-. In default of payment of fine, the petitioner was to undergo further RI for one month. The petitioner was further sentenced to undergo six months RI and to pay fine of Rs 500/- for the offence under Section 279 IPC. In default of payment of fine, he was ordered to undergo further RI for 15 days. In appeal, the sentence of one year for the offence under Section 304-A IPC was reduced to RI for 9 months. The sentence of fine of Rs 1,000/- and in default of payment of fine to undergo RI for one month, was maintained. The sentence of RI for 6 months and to pay fine of Rs 500/- and in default of payment of fine, to undergo further RI for 15 days, were also maintained.

Learned counsel for the petitioner has submitted that in fact the case against the petitioner is not made out and the petitioner was falsely involved in the case. Even otherwise, it is submitted that earlier charge against the petitioner was framed by the learned trial Magistrate on 14.7.1997 (Annexure P1). It was alleged in the said charge sheet that the petitioner on 30.11.1996 in the area of village Bansian at around 8 a.m. in the morning, rashly and negligently drove bus No. PB13-C-3877 and endangered the life of public at large and had committed an offence punishable under Section 279 IPC. Besides, on the same date, time and place while rashly and negligently driving the aforesaid bus, he caused the death of Bishan Singh and committed the offence not amounting to homicide punishable under Section 304-A IPC. The said charge was amended on 9.5.2003 (Annexure P2) in which though the date of

occurrence is mentioned as the same, however, the time was changed from 8 a.m. in the morning to 3 p.m. Besides, another offence i.e. under Section 338 IPC was attributed to the petitioner. By the time the charge was amended on 9.5.2003, Hardial Singh (PW9) and Baljit Kaur (PW 10) had already been examined. The petitioner after amendment of the charge wanted to further cross examine Hardial Singh (complainant) (PW9) and Baljit Kaur (PW 10). The petitioner had made a statement that he has no objection to the amendment of the charge. However, Hardial Singh (PW9) was required to appear but did not appear for the purpose of his cross examination after the amendment of the charge. Therefore, it is submitted that even though the deposition of Hardial Singh does not help the prosecution case, in any case, is not liable to be read in evidence. Besides, no test identification parade of the petitioner was held by the prosecution and he was identified by Hardial Singh and Baljit Kaur for the first time in Court which identification has no evidentiary value. In the alternative, it is submitted that the sentence of imprisonment in the facts and circumstances of the case, is liable to be reduced.

I have given my thoughtful consideration to the contentions of the learned counsel for the petitioner. However, I find no merit in the same.

Both the Courts below have reached the conclusion that the accident was caused due to the rash and negligent driving of the petitioner. The case regarding the causing of the accident has been proved against him. The contention of the learned counsel for the petitioner that after amendment of the charge, Hardial Singh (PW9) did not appear for the purpose of his further cross examination, is inconsequential. The learned Additional Sessions Judge, Jalandhar, in the appeal filed by the petitioner, has duly considered this aspect. It was observed that it was a case of

addition of the offence under Section 338 IPC which is lesser in gravity to that under Section 304-A IPC. In respect of the offence under Section 304-A IPC, the petitioner was given full opportunity to cross examine the witnesses examined by the prosecution. The evidence of the prosecution was closed by order passed on 4.8.2005. It was observed that in the opinion of the Court, the non-examination of Hardial Singh after amendment of the charge for the offence under Section 338 IPC would not affect the prosecution version. This was more so for the reason that the learned trial Court had acquitted the petitioner for the offence under Section 338 IPC.

In the circumstances, it is evident that no prejudice has been caused to the petitioner in his defence in respect of the charge that has been framed against him. Section 464 CrPC deals with the effect of omission to frame, or absence of or error in framing of charge. It is provided therein that no finding of sentence or order by a Court of competent jurisdiction shall be deemed to be invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. Therefore, it is to be seen whether any prejudice has been caused to the petitioner. The provisions relating to framing of charge and amendment thereof are procedural in nature. It is to be ascertained in the facts and circumstances of each case whether these have been conceived in the interest of the accused or in public interest. If these are in the interest of the accused, then it is to be seen whether any prejudice has been caused to him or there has been a waiver on his part. The ultimate test to vitiate the trial is always of prejudice having been caused. Therefore, mere non-appearance of Hardial Singh (PW9) to submit himself for further cross

examination on account of the amendment of the charge as initially framed, does not in the facts and circumstances cause any prejudice to the petitioner. The petitioner all along knew that he had been charged for causing the accident. Even the time of occurrence, which is stated to have been changed in the amended charge, is absolutely inconsequential and would not vitiate the trial or the impugned order in the face of the provisions of Section 464 CrPC.

Keeping in view the fact that a death had been caused and the petitioner has been found to be driving his vehicle in a rash and negligent manner, the sentences as imposed by the learned lower appellate Court are commensurate with the gravity of the offence. The learned lower appellate Court has already reduced the sentence of imprisonment from one year to 9 months in respect of offence under Section 304-A IPC. Therefore, no further reduction of the sentence of imprisonment is called for.

For the foregoing reasons, there is no merit in the petition and the same is accordingly dismissed.

20.3.2007. ( S.S.SARON )
ASR JUDGE